**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL WRIT PETITION NO.1866 OF 2006**

B.P.I.(India) Pvt.Ltd. & Ors. ...Petitioners

vs.

M/s.R.Desai Paper Marketing P.Ltd. & Ors. ...Respondents

Mr.Prem Sood for the Petitioners
Mr.U.V.Nikam,A.P.P. for State

**CORAM: A.S.OKA,J.**
**DATE : SEPTEMBER 5,2006.**

**P.C.:**

1. Heard learned Counsel for the Petitioners. He submitted that the notice on which the complaint under section 138 of Negotiable Instruments Act, 1881 was filed by the first Respondent was defective as the demand made by the said notice is for an amount which is less than the cheque amount. He invited my attention to the fact that the demand is for Rs.23,653.35 and the cheque amount is Rs.96,116.00. He placed reliance on the decision of the Apex Court in case of K.R.Indira vs. G. Adityanarayana reported in (2003) 8 S.C.C. page 300 and Suman Sethi Vs.Ajay K.Churiwal reported in 2000 (5) Bombay Cases Reporter page 271. He also placed reliance on the decision of the learned Single Judge of the Andhra Pradesh High Court in case of T.C.I. Finance Ltd. Vs. State of Andhra Pradesh. He submitted that the statement of accounts which is annexed to the complaint itself shows that there was no subsisting liability on the part of the Petitioners. He submitted that the Petitioner Nos.2 and 3 are

residents of New Delhi and they are being harassed by issuing warrants.

2. I have considered the submissions. The decisions of the Apex Court which are relied upon by the learned Counsel for the Petitioners cannot be read as authorities for the absolute proposition that while issuing notice as contemplated under clause b of section 138 of the said Act of 1881, a demand can never be made in respect of the amount which is lesser than the cheque amount. Notice in this case is very specific.

3. The Petitioners challenged the order of the learned Magistrate issuing process on the complaint filed by the first Respondent by filing a Revision Application before the Sessions Court and the Sessions Court has rejected the Revision Application. Today, only limited question which is to be examined is whether power of quashing the complaint should be exercised at this stage. The Apex Court in case of Monaben Ketanbhai Shah and another Vs. State of Gujrat reported in (2004) 7 S.C.C. page 15, held that where after reading the complaint as a whole, it is found that factual foundation for the offence has been made in the complaint, it should not be quashed. The Apex Court held that the power of quashing is required to be exercised very sparingly and where factual foundation for the offence has been laid in the complaint, it should not be quashed. In the present case perusal of the complaint shows that a factual foundation for

the offence has been laid in the complaint.

5. So far as grievance regarding issuance of warrants is concerned, it will be open for the Petitioner Nos.2 and 3 to apply for grant of exemption. If the learned Magistrate is satisfied that the Petitioner Nos.2 and 3 are the permanent residents of New Delhi, I am sure that necessary order granting exemption will be issued in favour of the said Petitioners.

6. Subject to what is stated above, Writ Petition is rejected. It is made clear that the observations which are made in this order as well as in the order passed by the learned Additional Sessions Judge are for limited purposes of examining legality and validity of the order issuing process.

7. All contentions of the parties on merits of the complaint are kept open.

**JUDGE**